83 - 330

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

RUTH A. WOLD,

Petitioner,

vs.

BULL VALLEY MANAGEMENT COMPANY, INC.,
an Illinois corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTIONS PRESENTED

1.

Whether An Order Of April 21st, 1980, Of The Circuit Court Of McHenry County, Illinois, Wrongfully Dismissing This Civil Action For A Purported Want Of Prosecution, Or A Decision Of April 22nd, 1983, Of The Supreme Court Of Illinois, Affirming A Decision Of June 9th, 1981, Of The Appellate Court Of Illinois, Second Judicial District, Dismissing Petitioner's Appeal As A Matter Of State Constitutional Right From The Order Of April 21st, 1980, On The Ground That Order Is Not A Final And Appealable Order Under Supreme Court Of Illinois Rule 301 (73 Ill. 2d R. 301), (And, By Inference, Is Not A Final Judgment, Under Article VI, Section 6, Of The Constitution Of The

State Of Illinois), Since Section 24 Of The Illinois Limitations Act (Ill. Rev. Stat. 1979, Ch. 83, Par. 24a) Gives The Plaintiff An Absolute Right To Refile The Action Within One Year Of Such Dismissal, And An Appeal Taken From Such An Order Is Properly Dismissed For Lack Of Jurisdiction, An Obvious Erroneous Conclusion, Is A Final Judgment Or Decree Within The Meaning Of Those Words As Used In Title 28, § 1257, United States Code, Which May Be Reviewed By This Court Under That Act By Writ Of Certiorari, That Being A Federal Question For This Court To Decide Without Regard To The Erroneous Decisions Of The Illinois Supreme Court And Appellate Court Aforesaid.

Whether The State Of Illinois By The Order Of April 21st, 1980, Of The Circuit Court Of McHenry County, Illinois, Wrongfully Dismissing This Civil Action For A Purported Want Of Prosecution, Coupled With The Decision Of April 22nd, 1983, Of The Supreme Court Of Illinois, Holding That The Order Of April 21st, Is Not A Final And Appealable Order Under Supreme Court Of Illinois Rule 301 (73 Ill. 2d R. 301), (And, By Inference, Is Not A Final Judgment, Under Article VI, Section 6, Of The Constitution Of The State Of Illinois), On The Ground That A State Statute Giving A Plaintiff An Absolute Right To Refile An Action Dismissed For Want Of Prosecution Without Regard

To Whether It Has Been Wrongfully Dismissed Or Not, When Said Order Of April 21st, 1980, Has Effectively Put Petitioner Out Of Court As Far As Her Present Claim Is Concerned, And Puts An End To This Particular Suit, Although It Does Not Finally Determine The Rights Of The Parties, And Under Previous Decisions Of The Supreme Court Of Illinois And The Appellate Court Of Illinois Such An Order Has Been Held To Be A Final Judgment, And That Is The Absolute Majority View In The Other State And Federal Courts, Including This Court, Has Not Deprived Petitioner Of Her Right To Appeal As A Matter Of State Constitutional Right Under Article VI, Section 6, Of The Constitution Of The State Of Illinois, And Has Not

Deprived Her Of Her Property Without Due Process Of Law, And Has Not Denied Her The Protection And Equal Protection Of The Laws, In Violation Of Her Federal Rights Under The 14th Amendment, Section 1, To The Constitution Of The United States.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, A.D. 1983

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RUTH A. WOLD,

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BULL VALLEY MANAGEMENT COMPANY, INC., an Illinois corporation,

Respondent.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

RUTH A. WOLD, Petitioner, by her attorney HUGH M. MATCHETT, petitions the Court to issue a writ of certiorari to the Supreme Court of Illinois to review a judgment of

that court entered April 22nd, 1983, which became final on May 27th, 1983, on denial of a petition for rehearing, holding that a dismissal for want of prosecution is not a final and appealable order under Supreme Court of Illinois Rule 301 (73 Ill.2d R. 301), since section 24 of the Limitations Act (Ill. Rev. Stat. 1979, ch. 83, par. 24a) gives the plaintiff an absolute right to re-file the action within one year of such a dismissal, and an appeal taken from such an order is properly dismissed for want of jurisdiction, affirming a judgment of the Appellate Court of Illinois, Second Judicial District, dismissing Petitioner's appeal taken as a matter of state constitutional right from an order of the Circuit Court of McHenry County, Illinois, dismissing her suit for a purported want of prosecution on the ground stated.

This petition is due to be filed on or before August 25th, 1983.

OPINION BELOW

The opinion of the Supreme Court of Illinois is reported as: "RUTH A. WOLD, Appellant, v. BULL VALLEY MANAGEMENT COMPANY, INC., Appellee, 1983, 96 Ill.2d 110," and is set out in the Appendix as Appendix "A", pages 1a-5a, dissenting opinion, pages 5a-9a). (The opinion of the Appellate Court of Illinois, Second Judicial District, is reported as 97 Ill.App.3d 516, and appears in the Appendix as part of Appendix "B", pages 23a-30a, dissenting opinion, pages 30a-33a.)

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, U.S. Code, § 1257(3).

ILLINOIS CONSTITUTIONAL PROVISIONS AND STATUTORY PROVISIONS AND RULES INVOLVED IN THIS CASE

The Constitution of Illinois provides:

Article VI, Section 1: "The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts."

Article VI, Section 4(a): "Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court."

Article VI, Section 6: "Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located."

Supreme Court of Illinois Rule 301 provides: "Every final judgment of a circuit

court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. An appeal is a continuation of the proceeding. All rights that could have been asserted by appeal or writ of error may be asserted by appeal. No formal exception need be taken in order to make any ruling or action of the court reviewable."

Supreme Court of Illinois Rule 315 provides: "(a) Petition for Leave to Appeal; Grounds. A petition for leave to appeal to to the Supreme Court from the Appellate Court may be filed by any party, including the State, in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion."

Supreme Court of Illinois Rule 316 provides: "Appeals from the Appellate Court shall lie to the Supreme Court upon the certification by the Appellate Court that a case decided by it involves a question of such importance that it should be decided by the Supreme Court. Application for a certificate of importance may be included in a petition for rehearing * * * ."

Supreme Court of Illinois Rule 317 provides: "Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right in cases in which a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court. The appeal shall be initiated by filing a petition in the form prescribed by Rule 315, except the petition shall be en-

titled 'Petition for Appeal as a Matter of Right.' * * * When both appeal as a matter of right and leave to appeal are sought, both requests will be disposed of by a single order. If the court allows the petition, briefs and abstracts in cases in which they are required, shall be filed as provided in the case of appeal by leave under Rule 315."

Rule 315 provides: "If leave to appeal is allowed, the appellant may allow his petition for leave to appeal to stand as his brief, or may file a brief in lieu of or supplemental thereto."

2 Illinois Revised Statutes 1981, Chapter 83, Paragraph 24a, provides:

> "In the actions specified in this Act or any other act or contract where the time for commencing an action is limited, if judgment is enter- for the plaintiff but reversed on appeal, or if there is a verdict for the plaintiff and, upon a motion in

> arrest of judgment, the judgment is entered against the plaintiff, or the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, then, whether or not the time limitation for bringing such action expires during the pendency of such action, the plaintiff, his or her heirs, executors or administrators may commence a new action within one year or within the remaining period of limitation, whichever is greater, after such judgment is reversed or entered against the plaintiff, or after the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction." (Emphasis ours.)

STATEMENT OF THE CASE

On September 18th, 1978, petitioner, RUTH A. WOLD, as plaintiff, filed a complaint against BULL VALLEY MANAGEMENT COMPANY, INC., for damages resulting from a malicious breach of an employment contract by the corporation.

The case was set for jury trial on April 21st, 1980. On April 2nd, 1980, she filed a petition for a change of venue, a motion to strike the counteraffidavit of Orin W. Wold, and a motion to remove the case from the civil trial call. In the motion to remove the case from the scheduled trial date, her attorney stated that he had several appellate briefs to prepare and that he was unable to appear on his motion at any time prior to June 3rd, 1980. Counsel requested the clerk to present his motion to the judge. The circuit court of McHenry County did not rule on any of the motions but, instead, dismissed the cause for want of prosecution because of plaintiff's failure to appear on April 21st, 1980.

Petitioner appealed and alleged that the trial court erred in dismissing the ac-

tion for want of prosecution, failing to grant the petition for change of venue, failing to grant the motion to strike Orin W. Wold's affidavit, and failing to grant a motion for summary judgment. The appellate court determined sua sponte that it did not have jurisdiction to consider the appeal. The court found that a dismissal for want of prosecution is not a final and appealable order, since under section 24 of the Limitation's Act (Ill. Rev. Stat. 1979, ch. 83, par. 24a) petitioner could have refiled the action within one year after the dismissal. (97 Ill. App. 3d 516.)

Petitioner filed a petition for rehearing, which was the only way she could attack the decision of the court because the issue of finality of judgment had never been raised between the parties. Point III in that pe-

tition stated: "The action of this Court in dismissing this appeal has given rise for the first time in and as a result of that action /to/ a question under the Constitution of the United States: to wit, Whether RUTH A. WOLD has not been deprived of her right to appeal as a matter of right under Article VI, Section 6, of the Constitution of this State, and of her right to remedy and justice for an injury and wrong to her property under Article I, Section 12, of the Constitution of this State, and of her right not to be deprived of her property without due process of law and not to be denied the protection and equal protection of the laws under Article I, Section 2, of the Constitution of this State and under the 14th Amendment, Section 1, to the Constitution of the United States. In other words, the question whether an order dis-

missing a suit for want of prosecution is a final and appealable order or not is a constitutional question. RUTH A. WOLD takes the position that that type of an order is a final and appealable judgment under the Constitution of the State of Illinois, and that as a result she has been deprived of her constitutional rights above stated.

"She has a right to appeal from the Order of June 9th, 1981, to the Supreme Court of Illinois as a matter of right under Article VI, Section 4, of the Constitution of this State, but under the same section this Court has the power to certify that this case involves a question of such importance, i.e., the constitutional question, that the case should be decided by the Supreme Court of Illinois. Under the circumstances a certificate of importance is warranted in the

event this petition for rehearing is denied, and this Court should grant the certificate in that event." The petition for rehearing or Certificate of Importance was denied.

Petitioner filed a Petition For Appeal As A Matter Of Right Or, In The Alternative, Petition For Leave To Appeal, in the Supreme Court of Illinois, and in her Argument "Why This Appeal Lies To This Court As A Matter Of Right," said: "Whether the Order of April 21st, 1980, is a final judgment within the meaning of that term as used in Article VI, Section 6, of the Constitution of Illinois, is obviously a question arising under that constitution. Sears v. Sears, 1981, 85 Ill. 2d 241, 258. The question was raised for the first time in the Appellate Court by that court, when it said: "W/e have the duty to

raise the question sua sponte.' And it was decided by the action of the Appellate Court in holding that 'the dismissal for want of prosecution was not a judgment on the merits nor did it terminate the litigation from which an appeal may be taken, and this appeal is dismissed.' (Appendix 4a-5a.) Article VI, Section 4(c), of the Constitution of Illinois, and Rule 317, provide that:

> "Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court.'

We incorporate by reference Point III of the Petition For Rehearing in the Appellate Court to establish the matter was argued in that court (Appendix 13a-15a), and the argument.

It follows, this appeal lies to this Court as a matter of right."

Under the heading: "Statement Of The Points Relied Upon For Reversal," her Point I was: "The Order Of April 21st, 1980, Is A Final Judgment Within The Meaning Of That Term As Used In Article VI, Section 6, Of The Constitution of Illinois, And It Follows That The Order Of June 9th, 1981, Has Deprived Petitioner Of Her Right To Appeal As A Matter Of Right In Violation Of That Provision, And Of Her Right To Remedy And Justice In Violation Of Article I, Section 12, And Of Her Right To Due Process And Equal Protection In Violation Of Article I, Section 2, Of That Constitution, And Of Her Right To Due Process And Equal Protection In Violation Of The 14th Amendment, Section 1, To The Constitution Of The United States."

She argued: "Under the decision of the Appellate Court in this case, the trial court

may with impunity dismiss a suit for a purported want of prosecution without appellate review. * * * This is not sound policy. It permits the trial court to prevent appellate review." "This Court should grant leave to appeal as a matter of sound judicial discretion, to enable this Court to render an opinion 'in which' the 'whole set of cases' dealing with final judgments 'has been explored, clarified, and put into condition, for a while, to be just used' in which you would define a final judgment as a judgment that deprives a plaintiff 'of the type of relief sought' and 'effectively puts the plaintiffs 'out of court' as far as their present claim is concerned' and 'puts an end to the particlar suit in which it is rendered, whether or not it finally determines the rights of the parties'." "A dismissal for want of prosecution is a final and appealable order." "In

"I/n Craven v. Craven, 1950, 407 Ill. 252, 255, * * * you said: 'The decree of October 4, 1949, dismissing the cause for want of prosecution was final in its nature.' We appreciate the language in the decision of the Supreme Court of Mississippi in Solomon v. Baking Co., 1935, 174 Miss. 890, 897, that: 'It is true that the judgment of dismissal for want of prosecution does not fully determine the rights of the parties litigating, but it is a final determination of that suit. Under statutes allowing appeals only after final judgment, the decisions have been uniform, so far as our researches extend, that the judgment is to be understood as final if it puts an end to the particular suit in which it is rendered, whether it determines the rights of the parties or not.'"

The Supreme Court of Illinois granted leave to appeal. While this action was pend- in that Court it rendered its decision in Flores v. Dugan, 1982, 91 Ill.2d 108. Petitioner was granted leave to file a Supplemental Brief, citing 1 Freeman On Judgments, 5th Ed (1925) by Edward W. Tuttle, § 22, Page 35, Note 4, § 23, Pages 39-40, and cases cited therein, holding that a judgment or decree is final if it ends the particular suit in which it is entered, and the following cases supporting that conclusion: Weston v. City Council of Charleston, 1829, 4 Pet 448, 464, (Marshall, C.J.: "We think also, that it was a final judgment, in the sense in which that term is used in the 25th section of the judiciary act."); Wacker v. National Enameling Co., 1907, 204 U.S. 176, 181; Bowles v. Beatrice Creamery Co., 1944, 146 F.2d 774, 776; United States v. National City Lines 334 U.S. 573, 577;

United States v. Wallace & Tiernan Co., 1949, 336 U.S. 793, 794; Oaks v. Rojcewicz, 1966, (Alaska), 409 P.2d 839, 842, 844-5; Allied Air Freight, Inc. v. Pan American World Airways, Inc., 1968, 393 F.2d 441, 444; Elfenbein v. Gulf & Western Industries, Inc., 1978, 590 F.2d 445, 448; Montgomery Ward & Co., Inc., v. Smith, 1980, 412 Atl 2d 728, 729, 730; and the Restatement Of The Law Of Judgments, American Law Institute, 1942, §§ 41, Page 162, and 53, Page 207, and the American Law Institute Restatement Of The Law Second, Judgments 2d, § 13, Comment b, Pages 132-133.

The Supreme Court of Illinois held it was bound by its previous decision, without considering the merits of petitioner's position and the cases cited by her and the State and Federal constitutional issues involved.

REASONS FOR GRANTING THE WRIT

This petition for a writ of certiorari should be allowed because the Order of April 21st, 1980, of the Circuit Court Of McHenry County, Illinois, wrongfully dismissed this civil action for a purported want of prosecution, and the decision of April 22nd, 1983, of the Supreme Court of Illinois, affirming the decision of June 9th, 1981, on the ground at the Order of April 21st, 1980, is not a final and appealable order under Supreme Court of Illinois Rule 301, and, by inference, is not a final judgment, under Article VI, Section 6, of the Constitution of the State of Illinois is absurd.

The Order of April 21st, 1980, has effectively put petitioner out of court as far as her present claim is concerned, and puts an end to this particular suit, although it does

not finally determine the rights of the parties, and under the previous decisions of the Supreme Court of Illinois and the Appellate Court of Illinois prior to the decision of the Supreme Court of Illinois in Flores v. Dugan, 1982, 91 Ill. 2d 108, in a 4-3 opinion, there was no doubt that an order dismissing a suit for want of prosecution, or any other involutary dismissal of a suit not going to the merits of the case, was a final judgment appealable as a matter of right. That those decisions were correct is shown by the decisians of this Court, which have been followed by all the decisions of the United States Court of Appeals, and the vast majority of the State courts, and approved by the text writers.

This Court should grant this petition for a writ of certiorari to lay down a Federal standard what State court judgments involuntar-

illy dismissing a suit are judgments and decrees that are final and appealable.

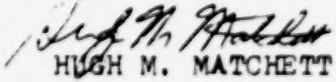
There is another reason for granting a writ of certiorari, and, perhaps, the most important reason, which is that the Constitution of Illinois, Article VI, Section 4(c), provides that: "Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court." This Court will note that in the present case petitioner's petition for appeal as a matter of right was based on State and Federal questions arising under the Constitution of the United States and of the State of Illinois arising for the first time in and as a result of the action

of the Appellate Court. Petitioner filed a petition to appeal as a matter of right or, in the alternative for, as a matter of sound judicial discretion. The Court granted the petition for leave to appeal and disregarded the constitutional questions raised, and decided the case on the basis of its own rules. We think this Court should grant this petition and ask the Supreme Court of Illinois to explain why.

CONCLUSION

This petition should be allowed, the constitutional questions determined, and the judgments should be reversed.

Respectfully submitted,



HUGH M. MATCHETT

APPENDIX
"A"

The Opinion in RUTH A. WOLD, Appellant, v. BULL VALLEY MANAGEMENT COMPANY, INC., Appellee, (Opinion filed April 22, 1983. -Rehearing denied May 27, 1983), 96 Ill.2d 110, reads:

JUSTICE CLARK delivered the opinion of the court:

On September 18, 1978, plaintiff, Ruth A. Wold, filed a complaint against Bull Valley Management Company for damages resulting from an alleged malicious breach of an employment contract entered into between Orin W. Wold and herself.

The case was set for jury trial on April 21, 1980. On April 2, 1980, the plaintiff filed a petition for a change of venue, a motion to strike the counteraffidavit of Orin

W. Wold, and a motion to remove the case from the civil jury trial call. In the motion to remove the case from the scheduled trial date, plaintiff's counsel stated that he had several appellate briefs to prepare and that he was unable to appear on his motion at any time prior to June 3, 1980. Counsel requested the clerk to present his motion to the judge. The circuit Court of McHenry County did not rule on any of the motions but, instead, dismissed the cause for want of prosecution because of plaintiff's failure to appear on April 21, 1980.

Plaintiff appealed and alleged that the trial court erred in dismissing the action for want of prosecution, failing to grant the petition for change of venue, failing to grant the motion to strike Orin W. Wold's affidavit, and failing to grant a

prior motion for summary judgment. The appellate court determined that it did not have jurisdiction to consider the appeal. The court found that a dismissal for want of prosecution is not a final and appealable order, since under section 24 of the Limitations Act (Ill. Rev. Stat. 1979, ch. 83, par. 24a) the plaintiff could have refiled the action within one year after the dismissal. (97 Ill. App. 3d 516.) We granted the plaintiff's petition for leave to appeal (73 Ill.2d R. 315).

The issue presented for our review is whether a dismissal for want of prosecution is a final and appealable order. Our decision in Flores v. Dugan (1982), 91 Ill. 2d 108, is dispositive.

In Flores the circuit court denied the the plaintiff's motion for a continuance of

the trial date and dismissed the cause for want of prosecution. The plaintiffs appealed from that decision and argued that the trial court order was final and appealable. This court, in a divided opinion, found that because the plaintiff had an absolute right to refile the cause under section 24 of the Limitations Act (Ill. Rev. Stat. 1979, ch. 83, par. 24A), the order dismissing the cause for want of prosecution was not a final and appealable order under Supreme Court Rule 301 (73 Ill. 2d 301). Flores v. Dugan (1982), 91 Ill. 2d 108, 112.

The court reasoned:

> "A final judgment has been defined as a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit. (Towns v. Yellow Cab Co. (1978), 73 Ill. 2d 113, 119; C.J.S. Judgments sec. 5 (1947).) We have also stated on many occasions that a judgment is final if it determines the litiga-

> tion on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. (People ex rel. Scott v. Silverstein (1981), 87 Ill. 2d 167, 171; Village of Niles v. Szczesny (1958), 13 Ill. 2d 45, 48.) The order or judgment in this case, dismissing the cause for want of prosecution, is not a final order since the plaintiffs had an absolute right to refile the action against the same party or parties and to reallege the same causes of action. Aranda v. Hobart Manufacturing Corp. (1977), 66 Ill. 2d 616; Franzese v. Trinko (1977), 66 Ill. 2d 136; Ill. Rev. Stat. 1979, ch. 83, par. 24a." (91 Ill. 2d 108, 112-13.)

In light of this court's decision in Flores, it is clear that the order of dismissal for want of prosecution in the instant case is not a final and appealable order. Pursuant to section 24 of the Limitations Act, counsel could have refiled the action within one year after the dismissal on April 21, 1980. The plaintiff failed to pursue the proper remedy.

Accordingly, the decision of the appel-

late court dismissing this appeal is af-affirmed.

Judgment affirmed.

JUSTICE MORAN took no part in the consideration or decision of this case.

JUSTICE SIMON, dissenting:

I appreciate that the majority opinion is filed out of a sense of respect for precedent. Nevertheless I dissent not only for the reasons set forth in the dissenting opinion in Flores v. Dugan (1982), 91 Ill. 2d 108, 115 (Simon, J., dissenting), but also to point out the great number of authorities which are opposed to the Flores reasoning. The courts of several other States, the Federal courts, and various commentators have found dismissals of cases without prejudice

or with leave to refile to be appealable final orders, the important point being that such dismissals ended the litigation as far as the trial court was concerned. United States v. Wallace & Tiernan Co. (1949), 336 U.S. 793, 795 n.1, 93 L. Ed. 1042, 1047 n.1, 69 S. Ct. 824, 825 n. 1; Elfenbein v. Gulf & Western Industries, Inc. (2d Cir. 1978), 590 F.2d 445; Allied Air Freight, Inc. v. Pan American World Airways, Inc. (2d Cir. 1968), 393 F.2d 441 (dismissal for want of prosecution); Tierce v. Knox (1922), 207 Ala. 121, 92 So. 263; Beck v. Barnett National Bank (Fla. App. 1960), 117 So. 2d 45; Aiona v. Wing Sing Wo Co. (1962), 45 Hawaii 427, 368 P.2d 879; Solomon v. Continental Baking Co. (1936), 174 Miss. 890, 165 So. 607 (dismissal for want of prosecution); Goldman v. McShain (1968), 432 Pa. 61, 247

A.2d 455; Montgomery Ward & Co. v. Smith (D.C. App. 1980), 412 A.2d 728; see, e.g., 9 Moore, Federal Practice sec. 110.08/1/, at 113 (2d ed. 1982); 2 Ill. L. & Prac. Appeal and Error sec. 130, at 208 (1953); Restatement (Second) of Judgments sec. 13, comment b, at 132-33 (1982); 1 A. Freeman, Judgments sec. 22, at 35 n.4 (5th ed. 1925); K. Llewellyn, The Common Law Tradition: Deciding Appeals 294 (1960).

The rule adopted in Flores and now perpetuated in this case permits trial courts to act in arbitrary fashion and at the same time immunize their orders from appellate review. This can only breed disrespect for the judicial system.

Flores v. Dugan represents a distinct minority viewpoint in the United States;

perhaps no other jurisdiction has reached that result. No contrary authority has been cited in this case except Flores v. Dugan and a few decisions of the appellate court of this State which were relied on by the majority in Flores v. Dugan. There probably are none. As far as our appellate court is concerned, I pointed out in Flores v. Dugan that it has held far more frequently than not that dismissals for want of prosecution with leave to refile are appealable. I respectfully suggest that instead of continuing to follow precedent which is mistaken we consider returning to the mainstream on this issue at the earliest opportunity.

APPENDIX
"B"

Petition for Appeal as a Matter of Right or, in the Alternative, Petition for Leave to Appeal from the Appellate Court of Illinois, Second District, No. 80-80-354, There Heard on Appeal from the Circuit Court of the 19th Judicial Circuit, McHenry County, Illinois, No. 78-L-1468, filed in the Supreme Court of Illinois as No. 55330, Allowed As A Petition For Leave To Appeal.

PETITION FOR APPEAL AS A MATTER OF RIGHT
OR, IN THE ALTERNATIVE,
PETITION FOR LEAVE TO APPEAL

PETITION FOR APPEAL AS A MATTER OF RIGHT

To the Honorable Chief Justice and
Associate Justices of the Supreme Court
of Illinois:

Now comes RUTH A. WOLD, Petitioner, by her attorney HUGH M. MATCHETT, and petitions for appeal as a matter of right, or, in the alternative, for leave to appeal as a matter of sound judicial discretion, from an Order of June 9th, 1981, of the Illinois Appellate Court, Second District, (Appendix 1a-6a), dismissing her appeal as a matter of right from an Order of April 21st, 1980, of the Circuit Court of the 19th Judicial Circuit, McHenry County, Illinois, dismissing her suit for damages for breach of contract for want of prosecution, on the ground that the Order of April 21st, 1980, is not a final judgment within the meaning of that term as used in Article VI, Section 6, of the Constitution of Illinois, since she could have refiled the

action within one year after the dismissal pursuant to section 24 of the Limitations Act, one judge dissenting. Petitioner filed a timely Petition for Rehearing, including a motion for a Certificate of Importance (Appendix 7a-15a). They were denied on July 27th, 1981, (Appendix 16a).

Statement Of The Points Relied Upon For Reversal

I

The Order Of April 21st, 1980, Is A Final Judgment Within The Meaning Of That Term As Used In Article VI, Section 6, Of The Constitution Of Illinois, And It Follows That The Order Of June 9th, 1981, Has Deprived Petitioner Of Her Right To Appeal As A Matter Of Right In Violation

Of That Provision, And Of Her Right To Remedy And Justice In Violation Of Article I, Section 12, And Of Her Right To Due Process And Equal Protection In Violation Of Article I, Section 2, Of That Constitution, And Of Her Right To Due Process And Equal Protection In Violation Of The 14th Amendment, Section 1, To The Constitution Of The United States.

II

Assuming The Majority Opinion To Be Correct, This Case Was properly Pending Before The Appellate Court On June 9th, 1981, Because The Order Of April 21st, 1980, Dismissing This Suit For Want Of Prosecution,

Automatically Became A Final Judgment On April 21st, 1980, On Expiration Of The Time In Which The Suit Could Be Refiled In The Circuit Court, And The Notice Of Appeal Dated May 8th, 1980, And Stamped Filed May 20th, 1980, Automatically Perfected The Appeal On April 21st, 1981.

Statement Of The Facts Necessary To An Understanding Of This Case

The Order of June 9th, 1981, with the exception of the word "former", which we have deleted, gives a fair and accurate statement of the issues of this case on this appeal as a matter of right. It states:

> "Plaintiff appeals from the dismissal of her complaint for want of prosecution against Bull Valley Management Company, Inc., defendant, in which she sought damages for an alleged malicious

> breach of an employment contract entered into between her and her husband, Orin W. Wold, who she alledged was acting as an agent for the defendant. The issues raised on appeal by plaintiff are that the trial court erred in: (1) dismissing the action for want of prosecution; (2) failing to grant her petition for change of venue; (3) failing to grant her motion to strike Orin W. Wold's affidavit; and (4) failing to grant her motion for summary judgment. The determinative issue, however, is whether this court has jurisdiction to consider this appeal, and even in the absence of a brief by appellee, we have the duty to raise the question sua sponte."

(Appendix 2a.)

ARGUMENT

Why This Appeal Lies To This Court As A Matter Of Right

Whether the Order of April 21st, 1980, is a final judgment within the meaning of Article VI, Section 6, of the Constitution of Illinois, is obviously a question arising under that Constitution. Sears v. Sears, 1981, 85 Ill.2d 241, 258. The question was

raised for the first time in the Appellate Court by that court, when it said: "W/e have the duty to raise the question sua sponte." And it was decided by the action of the Appellate Court in holding that "the dismissal for want of prosecution was not a judgment on the merits nor did it terminate the litigation from which an appeal may be taken, and this appeal is dismissed." (Appendix 4a-5a.) Article VI, Section 4(c), of the Constitution of Illinois, and Rule 317, provide that:

> "Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court."

We incorporate by reference Point III of the Petition For Rehearing in the Appellate Court to establish the matter was argued in

that court (Appendix 13a-15a), and the argument.

It follows, this appeal lies to this Court as a matter of right.

Why This Appeal To This Court Should Be Allowed As A Matter Of Sound Judicial Discretion

Under the decision of the Appellate Court in this case, the trial court may with impunity dismiss a suit for a purported want of prosecution without appellate review.

Under the decision of the Appellate Court, First District, Second Division, in Arnold Schaffer, Inc. v. Goodman (1979), 73 Ill. App. 3d 329, the trial court may with impunity dismiss a suit without prejudice without appellate review.

Under the decision of the Appellate

Court, First District, First Division, in Iser Electric Company, Inc., v. Palmer, McHugh, Muldoon & Brusso, Ltd., in its Case No.80-1116, now pending before this Court on petition for appeal as a matter of right, the trial court may with impunity dismiss a suit in chancery with prejudice and transfer the suit to the law side of the court without appellate review.

This is not sound public policy. It permits the trial court to prevent appellate review. It becomes a "black hole", to use an analogy from outer space.

This Court should grant leave to appeal as a matter of sound judicial discretion, to enable this Court to render an opinion "in which" the "whole set of cases" dealing with final judgments "has been explored, clari-

fied, and put into condition, for a while, to be just used" in which you would define a final judgment as a judgment that deprives a plaintiff "of the type of relief sought" and "effectively puts the plaintiffs 'out of court' as far as their present claim is concerned" and "puts an end to the particular suit in which it is rendered, whether or not it finally determines the rights of the parties". See "The Common Law Tradition, Deciding Appeals," Karl N. Llewellyn, Professor of Law, University of Chicago, Little, Brown And Company, 1960, Page 294.

This petition should also be allowed because the decision sought to be appealed from, as will be seen in the cases cited below, is contrary to decisions of the Supreme Court of Illinois, and decisions of tha Appellate Court of Illinois, and decisions of

other Supreme and Appellate Courts, and the conclusions of general text writers.

Why The Decision Of The Appellate Court Should Be Reversed

The decision of the Appellate Court is in error for the reason stated in the first sentence of the dissenting opinion (Appendix 8a): "A dismissal for want of prosecution is a final and appealable order."

We incorporate Point I of our Petition For Rehearing in the Appellate Court (Appendix 8a-11a) stating that the decision of that Court is in error for the reasons stated in the dissenting opinion and the cases and other authority cited therein, especially the decision of this Court in Craven v. Craven, 1950, 407 Ill. 252, 255, where you said: "The decree of October 4, 1949, dismissing the cause for want of prosecution

was final in its nature." We appreciate the language in the decision of the Supreme Court of Mississippi in Solomon v. Baking Co., 1935, 174 Miss. 890, 897, that: "It is true that the judgment of dismissal for want of prosecution does not fully determine the rights of the parties litigating, but it is a final determination of that suit. Under statutes allowing appeals only after final judgment, the decisions have been uniform, so far as our researches extend, that the judgment is to be understood as final if it puts an end to the particular suit in which it is rendered, whether it determines the rights of the parties or not."

As pointed out by the Supreme Court of Hawaii in Aiona v. Wing Sing Wo Company, 1962, 45 Haw 427, 430, 881, even though a dismissal of a suit was expressly declared to

be without prejudice, "this did not affect the status of the appeal."

In addition to the cases and authorities cited in Point I of the Petition for Rehearing, we think the following cases from other jurisdictions should be considered by this Court: Goldman v. McShain, 1966, 432 Pa. 61, 65, and Beck v. Barnett National Bank of Jacksonville, 1960, Fla., 117 So.2d 45, 48, where the courts held that an order dismissing a suit for equitable relief and an order transferring an action at law to the equity side were final and appealable, in that the one deprived the plaintiff of the type of relief sought and effectively put him 'out of court' as far as the present claim was concerned, and the other was a final determination of his cause of action at

law.

We incorporate Point II of our Petition For Rehearing in the Appellate Court as part of this part of this petition (Appendix 12a-13a).

Respectfully submitted,

s/Hugh M. Matchett
HUGH M. MATCHETT

APPENDIX

80-354

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
APPELLATE COURT) ss:
SECOND DISTRICT)

At a session of the Appellate Court begun and held at Elgin on the 1st day of January, in the year of our Lord one thousand

nine hundred and eighty one, within and for the Second District of Illinois:

Present:

Honorable GLENN K. SEIDENFELD,
Presiding Justice

Honorable WILLIAM V. HOPF, Justice

Honorable GEORGE W. LINDBERG, Justice

Honorable WILLIAM R. NASH, Justice

Honorable PHILIP G. REINHARD, Justice

Honorable GEORGE W. UNVERZAGT, Justice

Honorable LLOYD A. VAN DEUSEN, Justice

LOREN J. STROTZ, Clerk

GEORGE B. KRAMER, Sheriff

BE IT REMEMBERED, that afterward, to wit: On June 9, 1981 the Opinion of the Court was filed in the Clerk's office of said Court, in words and figures following, viz.

No. 80-354

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

RUTH A. WOLD,

Plaintiff-Appellant,

vs.

BULL VALLEY MANAGEMENT COMPANY, INC., an Illinois corporation,

Defendant-Appellee.

Appeal from the 19th Judicial Circuit, McHenry County, Illinois

FILED Jun 9 - 1981
LOREN J. STROTZ, Clerk
Appellate Court, 2nd District

Publ. In Full

MR. JUSTICE REINHARD delivered the opinion of the court:

Plaintiff appeals from the dismissal of her complaint for want of prosecution against Bull Valley Management Company, Inc., defendant, in which she sought damages for an alleged malicious breach of an employment contract entered into between her and her former husband, Orin W. Wold, who she alleged was acting as an agent for the defendant. The issues raised on appeal by plaintiff are that the trial court erred in: (1) dismissing the action for want of prosecution; (2) failing to grant her petition for change of venue; (3) failing to grant her motion to strike Orin W. Wold's affidavit; and (4) failing to grant her motion for summary judgment. The determinative issue, however, is whether this court has jurisdiction to consider the appeal, and even in the absence of a brief filed

by appellee, we have the duty to raise the issue sua sponte. Allabastro v. Wheaton Nat. Bank (1980), 91 Ill. App. 3d 222, 414 N.E.2d 537; Cohen v. Sterling Nursing Home, Inc., (1978), 57 Ill. App. 3d 162, 372 N.E.2d 934.

A jury trial was set in this cause for April 21, 1980. On April 2, 1980, plaintiff filed several motions among which was a motion to take the case off the scheduled trial day. In that motion plaintiff's counsel stated that he had several appellate briefs to prepare and that he didn't have time to appear on his motions at any time prior to June 3, 1980, that he requested the clerk to present the motion to the judge and that he expected that his motion would be allowed. The trial judge did not rule on any of the motions, but instead, on plaintiff's and counsel's failure to appear on April 21, 1980,

dismissed the cause for want of prosecution.

Pursuant to section 24 of the Limitations Act (Ill. Rev. Stat. 1979, ch. 83, par. 24(a)), an action dismissed for want of prosecution may be commenced by filing a new action within one year after the dismissal. The statute operates under these circumstances as an extension of the applicable statute of limitations, and a plaintiff has an absolute right to refile the complaint at any time within the extended period. (Aranda v. Hobart Mfg. Corp. (1977), 66 Ill. 2d 616, 620, 363 N.E.2d 796.) With certain exceptions, an appeal to the appellate court in civil cases may be had only from final judgments. (Johnson v. Northwestern Memorial Hospital (1979), 74 Ill. App. 3d 695, 697, 393 N.E.2d 712; Arnold Schaffer, Inc. v. Goodman (1979), 73 Ill. App. 3d 729, 731, 392 N.E.2d 375.) A

judgment has been traditionally defined as a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit. (Towns v. Yellow Cab Co. (1978), 73 Ill. 2d 113, 119, 382 N.E. 2d 1217.) A dismissal for want of prosecution does not reach the merits of the cause under Supreme Court Rule 273 (58 Ill. 2d R. 273.) (Kutnick v. Grant (1976), 65 Ill. 2d 117, 180, 357 N.E.2d 480.) Since plaintiff could have refiled the action within one year after the dismissal on April 21, 1980, pursuant to section 24 of the Limitations Act, the order of dismissal for want of prosecution did not terminate the litigation. Arnold Schaffner, Inc. v. Goodman (1979), 73 Ill. App. 3d 729, 731, 392 N.E.2d 375.

Accordingly, the dismissal for want of prosecution was not a judgment on the merits nor did it terminate the litigation from which an appeal may be taken, and this appeal is dismissed.

APPEAL DISMISSED.

UNVERZAGT, J., concurs.

MR. JUSTICE VAN DEUSEN dissenting:

A dismissal for want of prosecution is a final and appealable order. (Watts v. Medusa Portland Cement Co. (1971), 132 Ill.App.2d 227, 230; Trojan v. Marquette National Bank (1967), 88 Ill.App.2d 428, 436.) The fact that the General Assembly, in the exercise of its constitutional powers, has granted plaintiff an absolute right to refile her claim as a new action "within one year or within the remaining period of limitation, whichever is

greater after * * * action is dismissed for want of prosecution" (Ill.Rev.Stat. 1979, ch. 83, par. 24a; Aranda v. Hobart Mfg. Corp. (1977), 66 Ill.2d 616, 620), does not, in my opinion, affect either the finality or appealability of the order dismissing the cause as originally filed for want of prosecution. The majority opinion's reliance on Arnold Achaffner, Inc. v. Goodman (1979), 73 Ill. App.3d 729, is misplaced. That case dealt not with an order of dismissal for want of prosecution but rather with an order dismissing the cause without prejudice. As the Schaffer court stated at page 731: "The order in the case at bar is on its face a non-appealable order because of the recitation 'without prejudice'".

The effect of the majority opinion in this case would be to permit the General As-

sembly, by the adoption of legislation, to determine when judicial orders become final and appealable. Another effect of the dismissal of the appeal in this case, will be to deny to the appellant any judicial review of the alleged errors of the trial court. As a precedent, the majority opinion precludes judicial review in all cases dismissed for want of prosecution as long as plaintiff can file a new action under section 24 of the Limitation Act (Ill.Rev.Stat. 1979, ch. 83, par. 24a).

Certificate of Clerk that the foregoing is a true, full and complete copy of the Opinion of the said Appellate Court in the above entitled cause, dated June 9th, A.D., 1981.

LOREN J. STROTZ

PETITION FOR REHEARING in Appellate Court of Illinois, Second Judicial District, Case No. 80-354.

Now comes RUTH A. WOLD, Plaintiff-Appellant, by her attorney HUGH M. MATCHETT, and petitions the Court to grant a rehearing of its Order of June 9th, 1981, and, in the event this petition is denied, for a certificate under Rule 316 that this case involves questions of such importance that it should be decided by the Supreme Court of Illinois:

I.

The Decision Of This Court Is In Error For The Reasons Stated In The Dissenting Opinion And Cases And Other Authority Cited Below.

The decision of this Court is in error for the reasons stated in the first sentence of the dissenting opinion: "A dismissal for want of prosecution is a final and appealable order. (Watts v. Medusa Portland Cement Co., (1971), 132 Ill.App.2d 227, 230; Trojan

v. Marquette National Bank, (1967), 88 Ill. App.2d 428, 436.)."

In Craven v. Craven, 1950, 407 Ill. 252, 255, the Court said: "The decree of October 4, 1949, dismissing the cause for want of prosecution was final in its nature."

In Zisook v. Industrial Commission, 1952, 347 Ill.App. 172, (Page -7- of an unpublished opinion), the Court said: "An order dismissing a case for want of prosecution is a final and appealable order. * * * Plaintiff could have sought review of the order * * * ."

In Liberty Mut. Ins. Co. v. Congress Michigan Auto Park, Inc., 1958, 19 Ill.App.2d 502, 505, the Court said: "An order dismissing a cause for want of prosecution is an involuntary nonsuit and is final in its nature and appealable. See Craven v. Craven, 407 Ill.

252, 255; Zisook v. Industrial Commission, 347 Ill.App. 178."

In United States v. Wallace Co., 1949, 336 U.S. 793, 795, note 1, the Court said: "That the dismissal was without prejudice to filling another suit does not make the cause unappealable, for denial of relief and dismissal of the case ended this suit as far as the District Court was concerned. Wecker v. National Enameling Co., 204 U.S. 176, 181-182. See also United States v. National City Lines, 334 U.S. 573, 577, and Bowles v. Beatrice Creamery Co., 146 F.2d 774. The motion to dismiss the appeal is overruled."

In Solomon v. Baking Co., 1935, 174 Miss. 890, 897, the Court, speaking of the argument presented by the majority in the present case, said:

"The argument was negatived by this court more than fifty years ago in Gill v. Jones, 57 Miss. 367, wherein, it was said: 'It is urged, however, on behalf of the plaintiff in error that the circuit court had no jurisdiction, and that the appeal to that court should be dismissed. He insists that the judgment rendered by the justices of the peace, being a dismissal of the complaint for want of prosecution before them, was not a final judgment; that the plaintiff was not concluded by it, and had a right to institute his suit anew, and that therefore no appeal to the circuit court will lie. It is true that the judgment of dismissal for want of prosecution does not fully determine the rights of the parties litigant, but it is a final determination of that suit. Under statutes allowing appeals only after final judgment, the decisions have been uniform, so far as our researches extend, that the judgment is to be understood as final if it puts an end to the particular suit in which it is rendered, whether it determines the rights of the parties or not.' That case was followed in McKinnon v. Horn, 78 Miss. 307, 29 So. 149; Feazell v. Staltzfus, 98 Miss. 886, 54 So. 444; and is in accord with the holding of the courts of other jurisdictions. Weston v. City Counsel of Charleston, 2 Pet. 449, 450, 7 L. Ed. 481; 3 C.J. 497; 2 R.C.L. 42; 1 Freeman on Judgments (5th Ed.), secs. 22 and 23."

In Aiona v. Wing Sing Wo Company, 1962, 45 Haw 427, 430, 368 P.2d 879, 881, the Court said:

> "However, we think it proper to state that in our opinion the plaintiffs were entitled to appeal in 1954 from the compulsory nonsuit ordered against them /from which they had dismissed an appeal on the ground it was not an appealable order/. See Central Transp. Co. v. Pullman's Car Co., 139 U.S. 24; 2 Am. Jur., Appeal and Error, § 82. This court has reviewed compulsory nonsuits previously, as illustrated by Garcia v. Mendonca, 7 Haw. 194; Territory of Hawaii v. McCandless, 16 Haw. 728; Lyu v. Shinn, 40 Haw. 198; Schmmelfennig v. Grove Farm Co., 41 Haw. 124. The words 'without prejudice' did not make the present case unique; in Territory v. McCandless, supra, this court expressly declared that the dismissal was without prejudice but this did not affect the status of the appeal. Accodingly, we are of the opinion that review of the order of April 26, 1954, should have been accorded in the former appeal even though the dismissal of the suit effected by that order was without prejudice."

In Tierce v. Knox, 1922, 207 Ala. 121,

122, the Court held that: "An appeal lies from such order or decree of dismissal." In Hall v. Proctor, 1940, 239 Ala. 211, 213, the Court held that such a decree "is reviewable on appeal."

4 Am Jur 2d "Appeal And Error" § 108 Page 626 Notes 1 and 2 states:

> "There are numerous rulings to the effect that a dismissal may be final for the purpose of appeal without prejudice to the beginning of another action., finality for this purpose being taken as meaning that the decision puts an end to the particular suit in which it is rendered, whether or not it finally determines the rights of the parties. The same position has been taken with regard to the finality and consequent direct appealability of a nonsuit without prejudice." (Emphasis ours.)

2 I.L.P. "Appeal And Error" § 120 Page 208 Note 88 states: "An order dismissing an action is a final appealable order, such as an order dismissing the case . . . for want of prosecution."

II

Assuming The Majority Opinion Is Correct, This Case Is Properly Pending Before This Court Because The Order Of April 21st, 1980, Dismissing This Suit For Want Of Prosecution, Automatically Became Final And Appealable On April 21-st, 1981, On Expiration Of The Time In Which The Suit Could Be Refiled In The Circuit Court, And The Notice Of Appeal Dated May 8th, 1980, And Stamped Filed May 20th, 1980, Automatically Took Effect On April 21st, 1981, And Brought This Appeal To Life.

This appeal was dismissed for want of prosecution on April 21st, 1980. Under the theory of this Court, it was not a final and appealable order because the suit could have been refiled at any time during the course of the next year. But the case could not have been refiled after April 21st, 1981. Hence, the order of April 21st, 1980, became final and appealable on April 21st, 1981, and activated the notice of appeal dated May 8th, 1980, and filed May 20th, 1980, and

brought this appeal to life.

In Markham v. Holt, 1966, 369 F.2d 940, 941; Dunbar v. Gabaree, 1974, 133 Vt. 59, 61, Carson v. Eberth, 1979, 3 Kans. App. 183, 186, and Gillen v. Bostwick, 1975, 231 Ga. 308, 310, the Courts gave effect to premature notices of appeal where the order sought to be appealed from was subsequently entered. The only difference between those cases and this case is the fact that in those cases a final and appealable judgment was subsequently entered, and in this case the judgment subsequently became final and appealable by passage of time, which seems to be a distinction without a difference. In equity and good conscience, the notice of appeal should have the same simultaneous effect in either situation.

III

The Action Of This Court In Dismissing This Appeal Has Given Rise For The First Time In And As A Result Of That Action To A Question Under The Constitution Of This State And Under The Constitution Of The United States: To Wit, Whether Ruth A. Wold Has Not Been Deprived Of Her Right To Appeal As A Matter Of Right Under Article VI, Section 6, Of The Constitution Of This State, And Of Her Right To Remedy And Justice For An Injury And Wrong To Her Property Under Article I, Section 12, Of The Constitution Of This State, And Of Her Right Not To Be Deprived Of Her Property Without Due Process Of Law And Not To Be Denied The Protection And Equal Protection Of The Laws Under Article I, Section 2, Of The Constitution Of This State And Under The 14th Amendment, Section 1, To The Constitution Of The United States, Which Gives Her A Right To Appeal From The Order Of Dismissal Of June 9th, 1981, To The Supreme Court Of This State As A Matter Of Right Under Article VI, Section 4 Of The Constitution Of This State, And Warrants This Court To Certify That This Case Involves A

Question Of Such Importance
That The Case Should Be Decided
By The Supreme Court Of Illinois
Under Said Section, Which It
Ought To Do.

The action of this Court in dismissing this appeal has given rise for the first time in and as a result of that action to a question under the Constitution of this State and under the Constitution of the United States: to wit, Whether RUTH A. WOLD has not been deprived of her right to appeal as a matter of right under Article VI, Section 6, of the Constitution of this State, and of her right to remedy and justice for an injury and wrong to her property under Article I, Section 12, of the Constitution of this State, and of her right not to be deprived of her property without due process of law and not to be denied the protection and equal

protection of the laws under Article I, Section 2, of the Constitution of this State and under the 14th Amendment, Section 1, to the Constitution of the United States. In other words, the question whether an order dismissing a suit for want of prosecution is a final and appealable order or not is a constitutional question. Ruth A. Wold takes the position that that type of an order is a final and appealable judgment under the Constitution of the State of Illinois, and that as a result she has been deprived of her constitutional rights above stated.

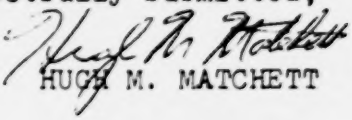
She has a right to appeal from the Order of Dismissal of June 9th, 1981, to the Supreme Court as a matter of right under Article VI, Section 4, of the Constitution of this State, but under the same section

this Court has the power to certify that this case involves a question of such importance, i.e., the constitutional question, that the case should be decided by the Supreme Court of Illinois. Under the circumstances a certificate of importance is warranted in the event this petition for rehearing is denied, and this Court should grant the certificate in that event.

CONCLUSION

This Court should grant this petition for a rehearing for the reasons stated herein under Points I and II and III of this petition, or, in the alternative, issue the certificate of importance requested, to enable the case to be decided by the Supreme Court of Illinois at its September, A.D. 1981 Term.

Respectfully submitted,



HUGH M. MATCHETT

STATE OF ILLINOIS
APPELLATE COURT SECOND DISTRICT
Elgin, Illinois 60120

July 27, 1981

THE COURT HAS THIS DAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No. 80-354

Ruth A. Wold, plaintiff-appellant, v. Bull Valley Management Company, Inc., defendant-appellee.

Petition by plaintiff-appellant for rehearing or Certificate of Importance denied.

LOREN J. STROTZ, Clerk

Hugh M. Matchett